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EXAMINER

ROLLINS, ROSILAND STACIE

ART UNIT	PAPER NUMBER
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3739

DATE MAILED: 11/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/619,366

Applicant(s)

ABBOUD ET AL.

Examiner

Rosiland S. Rollins

Art Unit

3739

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 8/19/05.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 26-30 and 47-52 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 26-30, 47-52 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

### ***Claim Objections***

Claims 26-30 and 47-52 are objected to because of the following informalities:  
the amendment made to claims 26 and 47 appear to contain a grammatical error.  
Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 28 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicant has failed to define the acronym "ECG". Its usage in the claim language causes the claim to be unclear and indefinite.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 26, 27, 29-30 and 47-52 are rejected under 35 U.S.C. 102(e) as being anticipated by Kudaravalli et al. (US 6471694). Kudaravalli et al. disclose a medical cooling system comprising a coolant supply unit and a medical device (300), a programmable controller (700) being connected to the medical device at a connection point on the proximal end of the medical device, a first cooling system (200), a second cooling system (114), a compressor (100), the programmable controller in communication with at least one distal sensor (307) in the medical device and coupled to a first valve (col. 6 lines 2-8) in the first cooling system, wherein the at least one distal sensor is in thermal communication with tissue to be treated, wherein the first cooling system includes a coolant return line leading from the medical device to a coolant scavenging system (512) and wherein the first cooling system and the medical device comprise a substantially open-loop and wherein the enclosure is disposed in a system component external to the coolant supply unit.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kudaravalli et al. '694. Kudaravalli et al. teach all of the limitations of the claims except

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the box being an ECG connection box. To select an ECG connection box as the box for containing the enclosure would have been an obvious design choice.

Claims 47 and 49-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Noda et al. (US 6146411). Noda et al. disclose a medical cooling system comprising a medical device (20), a coolant supply (60), a first coolant flow path, a subcooler (50) disposed about the portion of the first coolant flow path and having an inlet and an outlet, a second coolant flow path between the inlet and outlet of the subcooler, a first valve (62) in the first coolant flow path and a programmable controller (24). Noda et al. teach all of the limitations of the claims except the sensor being located in the medical device. To have modified the medical device of Noda et al. such that the distal sensor would be located in the device would have been obvious to an artisan since it has been held that making elements integral involves only ordinary skill in the art.

### ***Response to Arguments***

Applicant's arguments filed 8/19/05 have been fully considered but they are not persuasive. Applicant argues that Noda's disclosure of "*some or even all of these probes being placed exteriorly of the body at various locations in the system*" col. 7:15-18 precludes the temperature sensor from being integrated with the catheter. Applicant goes on to argue that Noda is primarily concerned with large area body cooling or organ cooling and it does not teach cooling the proximate or immediate vicinity of the medical device. In col. 7:4-7 Noda states that "[temperature] probe 22 can be placed anywhere


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in the body and is not necessarily restricted to proximity to the target site", which refutes the argument that Noda teaches away from having at least one distal sensor in the medical device and in thermal communication with tissue to be treated to detect the temperature of the tissue to be treated proximate the medical device. Moreover, Noda's statement that placement of the probe is not necessarily restricted to proximity to the target site indicates that the probe in some instances is placed in proximity to the target site.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rosiland S. Rollins whose telephone number is (571) 272-4772. The examiner can normally be reached on Mon.-Fri. 9:00 AM - 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Rosiland S Rollins  
Primary Examiner  
Art Unit 3739